

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Sep 19, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MEVLIJA J.,

Plaintiff,

v.

KILOLO KIJAKAZI,  
ACTING COMMISSIONER OF  
SOCIAL SECURITY,

Defendant.

No. 4:20-CV-05143-JAG

ORDER GRANTING  
DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT

**BEFORE THE COURT** are cross-motions for summary judgment. ECF No. 21, 26. Attorney Chad Hatfield represents Mevlija J. (Plaintiff); Special Assistant United States Attorney Heidi L. Triesch represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

**I. JURISDICTION**

Plaintiff protectively filed applications for Disability Insurance Benefits and Supplemental Security Income on November 17, 2016 alleging amended date of disability beginning November 1, 2015.<sup>1</sup> Tr. 15-16, 221-27, 228-34. The

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<sup>1</sup> At the hearing, through her representative, Plaintiff amended her alleged onset date of disability from August 1, 2005 to November 1, 2015. Tr. 15. As her

1 applications were denied initially and upon reconsideration. Tr. 135-37, 138-41.  
 2 Administrative Law Judge (ALJ) Lori Freund held a hearing on January 17, 2019,  
 3 Tr. 35-78, and issued an unfavorable decision on July 26, 2019. Tr. 12-30. Plaintiff  
 4 requested review by the Appeals Council and the Appeals Council denied the  
 5 request for review on June 16, 2020. Tr. 1-6. The ALJ's July 2019 decision  
 6 became the final decision of the Commissioner, which is appealable to the district  
 7 court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review  
 8 on August 18, 2020. ECF No. 1.

## 9 **II. STATEMENT OF FACTS**

10 The facts of the case are set forth in detail in the transcript of proceedings  
 11 and only briefly summarized here. Plaintiff was born in 1974 and was 41 years old  
 12 on the alleged onset date. Tr. 23. She completed 12 years of education in Bosnia.  
 13 Tr. 345, 953.

## 14 **III. STANDARD OF REVIEW**

15 The ALJ is responsible for determining credibility, resolving conflicts in  
 16 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
 17 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with  
 18 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,  
 19 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed  
 20 only if it is not supported by substantial evidence or if it is based on legal error.  
 21 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is  
 22 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at  
 23 1098. Put another way, substantial evidence is such relevant evidence as a  
 24 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*

25 \_\_\_\_\_  
 26 date last insured was in 2011, she was no longer entitled to a period of disability  
 27 and disability insurance benefits under Title II, and the ALJ dismissed her Title II  
 28 claim. Tr. 15-16, 25.

1 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one  
 2 rational interpretation, the Court may not substitute its judgment for that of the  
 3 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d  
 4 595, 599 (9th Cir. 1999). If substantial evidence supports the administrative  
 5 findings, or if conflicting evidence supports a finding of either disability or non-  
 6 disability, the ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d  
 7 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision supported by substantial  
 8 evidence will be set aside if the proper legal standards were not applied in  
 9 weighing the evidence and making the decision. *Browner v. Secretary of Health*  
 10 *and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

#### 11 **IV. SEQUENTIAL EVALUATION PROCESS**

12 The Commissioner has established a five-step sequential evaluation process  
 13 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v.*  
 14 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four the claimant  
 15 bears the burden of establishing a prima facie case of disability. *Tackett*, 180 F.3d  
 16 at 1098-1099. This burden is met once a claimant establishes that a physical or  
 17 mental impairment prevents the claimant from engaging in past relevant work. 20  
 18 C.F.R. § 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ  
 19 proceeds to step five, and the burden shifts to the Commissioner to show (1) that  
 20 Plaintiff can perform other substantial gainful activity and (2) that a significant  
 21 number of jobs exist in the national economy which Plaintiff can perform. *Kail v.*  
 22 *Heckler*, 722 F.2d 1496, 1497-1498 (9th Cir. 1984); *Beltran v. Astrue*, 700 F.3d  
 23 386, 389 (9th Cir. 2012). If a claimant cannot make an adjustment to other work in  
 24 the national economy, the claimant will be found disabled. 20 C.F.R. §  
 25 416.920(a)(4)(v).

#### 26 **V. ADMINISTRATIVE FINDINGS**

27 On July 26, 2019 the ALJ issued a decision finding Plaintiff was not  
 28 disabled as defined in the Social Security Act. Tr. 12-30.

1 At **step one**, the ALJ found Plaintiff had not engaged in substantial gainful  
2 activity since November 1, 2015 the amended alleged onset date. Tr. 18.

3 At **step two**, the ALJ determined Plaintiff had the following severe  
4 impairments: major depressive disorder, generalized anxiety disorder, and  
5 degenerative disc disease of the lumbar spine. *Id.*

6 At **step three**, the ALJ found Plaintiff did not have an impairment or  
7 combination of impairments that met or medically equaled the severity of one of  
8 the listed impairments. Tr. 19.

9 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found  
10 she could perform sedentary work, but with the following limitations:

11 [S]he could lift/carry up to five pounds frequently. She could sit for  
12 eight hours in an eight-hour workday and stand/walk for up to thirty  
13 minutes at one time for a total of two hours in an eight-hour workday.  
14 She could never climb ladders, ropes, or scaffolds and could  
15 occasionally climb stairs/ramps, balance, stoop, kneel, crouch, and  
16 crawl. She should never work around unprotected heights or hazardous  
17 machinery and [sh]ould avoid even concentrated exposure to extreme  
18 cold and heavy industrial vibration. She could perform simple and  
19 repetitive up to a reasoning level three with superficial contact with  
20 public and occasional contact with co-workers/supervisors [sic]. She  
21 could not perform fast-paced production type work.

22 Tr. 20.

23 At **step four**, the ALJ found Plaintiff was unable to perform her past  
24 relevant work. Tr. 23.

25 At **step five**, the ALJ found that, based on the testimony of the vocational  
26 expert, and considering Plaintiff's age, education, work experience, and RFC,  
27 Plaintiff could perform jobs that existed in significant numbers in the national  
28 economy, including the jobs of document preparer, final assembler, and package  
sealer. Tr. 24.

1 The ALJ thus concluded Plaintiff was not under a disability within the  
 2 meaning of the Social Security Act at any time from the amended alleged onset  
 3 date through the date of the decision. Tr. 25.

#### 4 VI. ISSUES

5 The question presented is whether substantial evidence supports the ALJ's  
 6 decision denying benefits and, if so, whether that decision is based on proper legal  
 7 standards. Plaintiff raises the following issues for review (1) whether the ALJ  
 8 properly evaluated the medical opinion evidence; (2) whether the ALJ conducted a  
 9 proper step-three analysis; (3) whether the ALJ properly considered Plaintiff's  
 10 subjective complaints; and (4) whether the ALJ conducted a proper step-five  
 11 analysis.

#### 12 VII. DISCUSSION

##### 13 A. Medical Opinion Evidence.

14 Plaintiff alleges the ALJ erred by improperly evaluating the opinion of  
 15 Whitney Fix-Lanes, D.O. ECF No. 21 at 10-14.

16 When a treating or examining physician's opinion is contradicted by another  
 17 physician, the ALJ must offer "specific and legitimate" reasons to reject the  
 18 opinion. *Andrews*, 53 F.3d at 1041; *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir.  
 19 1995). The specific and legitimate standard can be met by the ALJ setting out a  
 20 detailed and thorough summary of the facts and conflicting clinical evidence,  
 21 stating their interpretation thereof, and making findings. *Magallanes v. Bowen*, 881  
 22 F.2d 747, 751 (9th Cir. 1989). The ALJ is required to do more than offer her  
 23 conclusions, she "must set forth [her] interpretations and explain why they, rather  
 24 than the doctors', are correct." *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir.  
 25 1988).

26 On January 25, 2019, Dr. Fix-Lanes provided a medical report/statement on  
 27 behalf of Plaintiff. Tr. 1301-02. Dr. Fix-Lanes noted Plaintiff's diagnosis of  
 28 chronic midline low back pain with right sided sciatica. Tr. 1301. Dr. Fix-Lanes

1 reported Plaintiff's symptoms include lower back pain that "radiates down [the]  
2 right leg" and "numbness in right leg." *Id.* She indicated Plaintiff had to lie down  
3 during the day "10-20 minutes every 1-2 hours." *Id.* She noted Plaintiff's treatment  
4 including physical therapy, pain medication including gabapentin, meloxicam,  
5 oxycodone, acetaminophen, and topical gels, and noted that side effects from  
6 gabapentin and oxycodone limit Plaintiff's ability to operate machinery. *Id.* She  
7 opined "improvement with physical therapy is expected" *Id.* She further indicated  
8 that work on a regular and continuous basis would cause Plaintiff's condition to  
9 deteriorate, noting that "increase stress of lifting can worsen pain." Tr. 1302. She  
10 indicated that if Plaintiff attempted to work a 40-hour week it was more probable  
11 than not that she would miss 4 or more days per month due to medical  
12 impairments, noting "patient reports pain with activity." *Id.* She opined Plaintiff  
13 would likely be off task and unproductive during a 40-hour workweek 21-30  
14 percent of the time "without therapy," and that her limitations have existed since  
15 2016. *Id.* She noted Plaintiff "had multiple images of her spine, please refer to  
16 physical therapy notes." *Id.*

17 The ALJ gave Dr. Fix-Lanes' opinion little weight because she offered little  
18 support for her opinion, had minimal history with Plaintiff and there are no  
19 treatment notes from her, and her opinion was inconsistent with the medical  
20 imaging and treatment notes of record, which showed only moderate limitations.  
21 Tr. 23. Plaintiff contends the ALJ erred by rejecting the treating doctor's opinion  
22 without explanation, rationale, or citation to the record; and that Dr. Fix-Lanes'  
23 opinion was supported by imaging and examination findings and the ALJ inserted  
24 her own lay opinion in place of the doctor's opinion. ECF No. 21 at 10-14.  
25 Defendant argues the ALJ reasonably gave less weight to Dr. Fix-Lanes' opinion  
26 because it lacked explanation and stood at odds with other medical evidence. ECF  
27 No. 26 at 15-19.

1 The Court finds the ALJ did not err and gave specific and legitimate reasons  
2 to give Dr. Fix-Lanes' opinion less weight. First, the ALJ found Dr. Fix-Lanes  
3 offered little support for her opinion, and the lack of support for her opinion was  
4 compounded by her minimal history with Plaintiff and lack of treatment records.  
5 Tr. 23. An ALJ "need not accept the opinion of any physician, including a treating  
6 physician, if that opinion is brief, conclusory and inadequately supported by  
7 clinical findings." *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th  
8 Cir. 2009) (internal quotation marks and brackets omitted); "The better an  
9 explanation a source provides for a medical opinion, the more weight we will give  
10 that medical opinion." 20 C.F.R. § 416.927(c)(3); the longer a source has treated  
11 Plaintiff and the number of visits a Plaintiff had with a particular provider is also a  
12 relevant factor in assigning weight to an opinion. 20 C.F.R. § 416.927(c)(2)(i); and  
13 generally, the more knowledge a provider has about Plaintiff's impairment the  
14 more weight the medical opinion is due. 20 C.F.R. § 416.927(c)(2)(ii).

15 Here, while Dr. Fix-Lanes pointed generally to previous imaging and other  
16 records to support her limitations, she did not explain how these records supported  
17 her opinion; she only noted that "she has multiple images of her spine please refer  
18 to physical therapy notes." Tr. 1302. However, she also opined that the percentage  
19 of time Plaintiff would be off task is "without therapy" and that "improvement  
20 with physical therapy is expected." Tr. 1301-02. The ALJ reasonably pointed out  
21 her limited history with Plaintiff, as she indicated she had first seen Plaintiff less  
22 than a month prior to completing the form. Additionally, a physician's opinion  
23 may be rejected if it is unsupported by the physician's treatment notes. *Connett v.*  
24 *Barnhart*, 340 F.3d 871, 875 (9th Cir. 2003). The ALJ pointed out there are no  
25 treatment notes from this provider to support her opinion, frequency of visits, or an  
26 ongoing treating relationship. These were specific and legitimate reasons to  
27 discount her opinion.  
28



1 The ALJ also concluded that Dr. Fitz-Lanes' opinion was inconsistent with  
2 the longitudinal record. Tr. 23. An ALJ may reasonably consider the consistency of  
3 an opinion with the rest of the record. 20 C.F.R. § 416.927(c)(4). While Dr. Fitz-  
4 Lanes pointed generally to imaging and physical therapy records to support her  
5 opinion, the ALJ noted that Plaintiff had infrequently demonstrated weakness or  
6 positive straight leg raises, and consistently had normal gait upon exam. Tr. 21-22.  
7 The longitudinal record shows limited treatment was recommended by her  
8 providers for her back pain including physical therapy, which even Dr. Fitz-Lanes  
9 expected to improve her condition, and when epidural steroid injection was  
10 recommended, Plaintiff declined. *See e.g.*, Tr. 391, 385, 929, 1288-89. Notably, in  
11 2016 Plaintiff reported physical therapy improved her ability to perform household  
12 tasks and activities of daily living, and in 2018 she was noted to walk without a  
13 limp, have soreness with standing, and negative straight leg raises; she reported she  
14 had not had physical therapy since 2016, and her provider suggested another trial  
15 of physical therapy at that time. Tr. 385, 1289. When she returned to physical  
16 therapy in December 2018, her therapist noted some reduced strength, but he also  
17 indicated that physical therapy would help her improve strength, range of motion,  
18 correct her posture, and "improve motor control and stability during functional  
19 activities in order to decrease pain and return to prior level of function." Tr. 1296.

20 Further, although Dr. Fitz-Lanes' opinion describes symptoms including  
21 numbness, recent treatment notes from providers show no numbness in her legs;  
22 Dr. Fitz-Lanes also refers to Plaintiff's prescribed treatment for back pain  
23 including oxycodone, but this is inconsistent with the longitudinal record which  
24 shows her providers, including pain management specialists, consistently declined  
25 to prescribe opiates and recommend non-opiate pain management for her back  
26 pain. *See e.g.*, Tr. 407, 436, 961-62, 1024, 1288, 1298. At an office visit for back  
27 pain in December 2018, for example, around the time of Dr. Fitz-lanes' opinion,  
28 Plaintiff reported she was taking the oxycodone she had been prescribed for a



1 recent gynecological surgery, and that it helped her back pain; her doctor noted no  
2 one was managing her pain medication and declined to refill it, which is  
3 inconsistent with Dr. Fitz-Lanes' report a few days earlier that Plaintiff's treatment  
4 at that time for back pain included opiate pain medications. Tr. 1298. The ALJ's  
5 finding that Dr. Fitz-Lanes' opinion was inconsistent with the longitudinal record  
6 is supported by substantial evidence.

7       The ALJ also gave the medical expert testimony of Dr. Jahnke more weight  
8 than the opinion of Dr. Fix-Lanes. Tr. 22. At the hearing, Dr. Jahnke testified that  
9 Plaintiff's only severe (physical) impairment was degenerative disease of the  
10 lumbar spine. Tr. 44, 47. Dr. Jahnke opined Plaintiff did not meet or equal the  
11 listing for 1.04A, explaining that although she had pain radiating on the right side  
12 there was no gross evidence of nerve root compression or motor weakness. Tr. 47.  
13 Dr. Jahnke opined Plaintiff could occasionally lift and carry ten pounds and  
14 frequently lift and carry five pounds and that she had no limits in sitting and could  
15 stand and walk 30 minutes at a time for up to two hours in a workday. Tr. 47-48. In  
16 response to questions from Plaintiff's representative regarding evidence of positive  
17 straight leg raise testing, Dr. Jahnke testified that "[a] straight leg raise on the right  
18 but with radiation into the sacrum and buttocks. That is certainly pain. But it is not  
19 nerve root irritation"; and she acknowledged that while there were some findings  
20 on exam it was not enough, in her opinion, to meet or equal the listing. Tr. 49-50.  
21 Additionally, upon receipt of new evidence after the hearing including an MRI of  
22 the lumbar spine, on April 29, 2019, the ALJ forwarded the new evidence to Dr.  
23 Jahnke and asked her to review it and complete an interrogatory. Tr. 1322. On May  
24 9, 2019, Dr. Jahnke indicated that the additional medical evidence did not change  
25 her opinion given in her testimony regarding the nature and severity of Plaintiff's  
26 impairments. Tr. 1324. The ALJ gave Dr. Jahnke's opinion substantial weight. Tr.  
27 22.  
28

1 An ALJ may discredit physicians' opinions that are unsupported by the  
2 record as a whole. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195  
3 (9th Cir. 2004). Additionally, an ALJ may credit the opinion of nonexamining  
4 expert who testifies at hearing and is subject to cross-examination. *See Andrews*,  
5 53 F.3d at 1042 (citing *Torres v. Sec'y of H.H.S.*, 870 F.2d 742, 744 (1st Cir.  
6 1989)). The opinion of a nonexamining physician may serve as substantial  
7 evidence if it is supported by other evidence in the record and is consistent with it.  
8 *Andrews*, 53 F.3d at 1041. Further, an ALJ may consider a medical provider's  
9 familiarity with "disability programs and their evidentiary requirements" when  
10 evaluating a medical opinion. *Orn v. Astrue*, 495 F.3d 625, 631.

11 Here, as explained *supra*, Dr. Fitz-Lanes' opinion was inconsistent with the  
12 record as a whole, and the ALJ reasonably gave Dr. Jahnke's testimony more  
13 weight. The ALJ further noted Dr. Jahnke is a specialist in internal medicine, "she  
14 reviewed the entire medical record and is familiar with the Social Security Act,  
15 Listings and Regulations," and she had the opportunity to review post-hearing  
16 medical evidence and subsequently opined it did not change her opinion, and her  
17 opinion is consistent with the longitudinal record. Tr. 22.

18 The ALJ reasonably gave little weight to Dr. Fitz-Lanes' opinion because  
19 she offered little support for her opinion, she had minimal history with Plaintiff  
20 and there were no treatment records from her, and her opinion was inconsistent  
21 with the record as a whole, including the medical expert testimony of Dr. Jahnke.  
22 These were specific and legitimate reasons, supported by substantial evidence, to  
23 reject Dr. Fitz-Lanes' opinion. Even if the evidence could be interpreted more  
24 favorably to Plaintiff, if it is susceptible to more than one rational interpretation,  
25 the ALJ's ultimate conclusion must be upheld. *Burch v. Barnhart*, 400 F.3d 676,  
26 679 (9th Cir. 2005). The ALJ's conclusions were reasonable, and Plaintiff is not  
27 entitled to remand on this issue.  
28

1 **B. Step Three.**

2 Plaintiff argues the ALJ erred by failing to conduct an adequate analysis and  
3 failing to find Plaintiff disabled at step three. ECF No. 21 at 14-17. At step three of  
4 the sequential evaluation process, the ALJ considers whether one or more of the  
5 claimant's impairments meets or equals an impairment listed in Appendix 1 to  
6 Subpart P of the regulations. 20 C.F.R. § 416.920(a)(4)(iii). Each Listing sets forth  
7 the "symptoms, signs, and laboratory findings" which must be established for a  
8 claimant's impairment to meet the Listing. *Tackett*, 180 F.3d at 1099. If a  
9 claimant's condition meets or equals a Listing, the claimant is considered disabled  
10 without further inquiry. 20 C.F.R. § 416.920(d). "Listed impairments are  
11 purposefully set at a high level of severity because 'the listings were designed to  
12 operate as a presumption of disability that makes further inquiry unnecessary.'" *Kennedy v. Colvin*, 738 F.3d 1172, 1176 (9th Cir. 2013) (citing *Sullivan v. Zebley*,  
13 493 U.S. 521, 532 (1990)).  
14

15 "To *meet* a listed impairment, a claimant must establish that he or she meets  
16 each characteristic of a listed impairment relevant to his or her claim." *Tackett*, 180  
17 F.3d at 1099 (emphasis in original); 20 C.F.R. § 416.925(d). "To *equal* a listed  
18 impairment, a claimant must establish symptoms, signs and laboratory findings 'at  
19 least equal in severity and duration' to the characteristics of a relevant listed  
20 impairment . . ." *Tackett*, 180 F.3d at 1099 (emphasis in original) (quoting 20  
21 C.F.R. § 404.126(a)); 20 C.F.R. § 416.926(a). "If a claimant suffers from multiple  
22 impairments and none of them individually meets or equals a listed impairment,  
23 the collective symptoms, signs and laboratory findings of all of the claimant's  
24 impairments will be evaluated to determine whether they meet or equal the  
25 characteristics of any relevant listed impairment." *Id.* However, "[m]edical  
26 equivalence must be based on medical findings," and "[a] generalized assertion of  
27 functional problems is not enough to establish disability at step three." *Id.* at 1100  
28 (quoting 20 C.F.R. § 404.1526(a)); 20 C.F.R. § 416.926(a).

1 The claimant bears the burden of establishing her impairment (or  
2 combination of impairments) meets or equals the criteria of a listed impairment.  
3 *Burch*, 400 F.3d at 683. Further, “[a]n adjudicator’s articulation of the reason(s)  
4 why the individual is or is not disabled at a later step in the sequential evaluation  
5 process will provide rationale that is sufficient for a subsequent reviewer or court  
6 to determine the basis for the finding about medical equivalence at step 3.” SSR  
7 17-2p, 2017 WL 3928306, at \*4 (effective March 27, 2017).

8 Here, the ALJ found Plaintiff’s impairments or combination of impairments  
9 did not meet or equal any listings, noting that while Plaintiff “demonstrated a few  
10 positive straight-leg raising tests, she has not consistently demonstrated gross  
11 motor weakness or sensation loss” and “the impartial medical expert opined the  
12 [Plaintiff’s] impairments did not meet or medically equal listing 1.04.” Tr. 19.  
13 Plaintiff argues the ALJ failed to conduct an adequate analysis including whether  
14 or not Plaintiff’s impairment equaled a listing, failing to discuss evidence at step  
15 three, and failing to find the Plaintiff disabled at step three. ECF No 21 at 14-16.  
16 Dependent argues Plaintiff did not meet her burden to prove her back impairment  
17 met or medically equaled the criteria of listing 1.04A. ECF No 26 at 5-8.

18 The Court finds the ALJ did not err. There is no requirement that the ALJ’s  
19 discussion of evidence must occur at the step three determination. *Lewis v. Apfel*,  
20 236 F.3d 503, 513-14 (9th Cir. 2001) (finding that the ALJ “discussed and  
21 evaluated the evidence” that claimant did not meet a listing, even though that  
22 discussion did not take place “under the heading ‘Findings’”). Here, under the step  
23 three finding the ALJ explained Plaintiff did not meet or equal the severity of any  
24 listed impairment, briefly noted findings related to listing 1.04, and also referenced  
25 the testimony of medical expert Dr. Jahnke, who opined at the hearing that Plaintiff  
26 did not meet or equal the criteria of Listing 1.04. Tr. 19. Factual findings later in  
27 the ALJ’s decision describe evidence with sufficient specificity, including Dr.  
28

1 Jahnke's testimony as discussed *supra*, adequately supporting the ALJ's step three  
2 determination throughout the decision.

3 The step three findings by the ALJ must also be read in conjunction with the  
4 entire ALJ decision. SSR 17-2p, 2017 WL 3928306, at \*4. The ALJ relied on the  
5 testimony of the medical expert, which she gave substantial weight, as the  
6 foundation for her step three findings and the ALJ further explained this testimony  
7 and supporting evidence throughout the decision in discussing the medical records  
8 and medical opinions related to Plaintiff's back impairment. *See* Tr. 21-23. The  
9 ALJ's analysis in its entirety permits the Court to meaningfully review the ALJ's  
10 finding that Plaintiff's back impairment did not meet or equal the criteria of 1.04.

11 Further, courts will not find an ALJ has erred in determining whether  
12 combined impairments equal a listed impairment unless the Plaintiff has offered a  
13 "plausible theory" of medical equivalency. *See Kennedy*, 738 F.3d at 1176-77  
14 (citing *Lewis*, 236 F.3d at 514). Here, Plaintiff has failed to articulate any of her  
15 impairments (or combination of impairments) meets or equals the criteria of any  
16 listed impairment and has not met the burden of demonstrating she meets or equals  
17 any listing.

18 Plaintiff is not entitled to remand on this basis. The ALJ's determination that  
19 Plaintiff's impairments did not meet or equal a listed impairment at step three is  
20 supported by substantial evidence.

21 **C. Subjective Complaints.**

22 Plaintiff contends the ALJ erred by improperly rejecting her subjective  
23 complaints. ECF No. 21 at 17-20. It is the province of the ALJ to make  
24 determinations regarding a claimant's subjective statements. *Andrews*, 53 F.3d at  
25 1039. However, the ALJ's findings must be supported by specific, cogent reasons.  
26 *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Once the claimant  
27 produces medical evidence of an underlying medical impairment, the ALJ may not  
28 discredit testimony as to the severity of an impairment merely because it is

1 unsupported by medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir.  
2 1998). Absent affirmative evidence of malingering, the ALJ's reasons for rejecting  
3 the claimant's testimony must be "specific, clear and convincing." *Smolen v.*  
4 *Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); *Lester*, 81 F.3d at 834. "General  
5 findings are insufficient: rather the ALJ must identify what testimony is not  
6 credible and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d  
7 at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

8 The ALJ concluded Plaintiff's medically determinable impairments could  
9 reasonably be expected to cause the alleged symptoms; however, Plaintiff's  
10 statements concerning the intensity, persistence and limiting effects of those  
11 symptoms were not entirely consistent with the medical evidence and other  
12 evidence in the record. Tr. 21. The ALJ found Plaintiff's allegations were  
13 inconsistent with the longitudinal record, including objective evidence; records  
14 showed she improved with treatment; her allegations were inconsistent with her  
15 activities of daily living; and that she had reported she did not want to work. Tr.  
16 21-22. Plaintiff argues the ALJ improperly rejected Plaintiff's subjective  
17 complaints. ECF No. 21 at 17-20. Defendant argues the ALJ reasonably interpreted  
18 the record and offered clear and convincing reasons for discounting Plaintiff's  
19 allegations of disability. ECF No. 26 at 9-15.

20 **1. Inconsistent Objective Medical Evidence.**

21 The ALJ found the medical record does not support Plaintiff's symptom  
22 claims. Tr. 2-23. Although it cannot serve as the sole ground for rejecting a  
23 claimant's symptom statements, objective medical evidence is a "relevant factor in  
24 determining the severity of the claimant's pain and its disabling effects." *Rollins v.*  
25 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). The ALJ pointed to the generally  
26 unremarkable physical and mental status exams throughout the record that fail to  
27 support limitations to the extent alleged by Plaintiff. Tr. 21-22. The ALJ also  
28 credited the testimony of Dr. Jahnke, who reviewed the record in its entirety and

1 testified that although there were some objective findings to support Plaintiff's  
2 symptoms including radiating pain on the right side and evidence of degenerative  
3 disc disease, there was no gross evidence of nerve root compression or motor  
4 weakness; and she indicated this was still the case after reviewing the February  
5 2019 MRI. Tr. 47-49, 1324. The ALJ also noted mental status exam findings have  
6 been generally within normal limits, with generally normal affect and mood. Tr.  
7 21, *see e.g.*, Tr. 347, 354.

8 The ALJ's interpretation of the record is reasonable. While Plaintiff  
9 identifies objective findings that are supportive of her allegations, when the  
10 evidence can reasonably support either affirming or reversing a decision, the Court  
11 may not substitute its judgment for that of the Commissioner. *Lingenfelter v.*  
12 *Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007). Lack of support in the medical  
13 record, coupled with the additional reasons offered by the ALJ as discussed below,  
14 is a clear and convincing reason to give less weight to Plaintiff's subjective  
15 complaints.

16 **2. Improvement with Treatment/Failure to Follow Through with**  
17 **Treatment.**

18 The ALJ noted Plaintiff did not follow through with treatment  
19 recommendations, including epidural steroid injection, and noted that she  
20 improved with treatment including counseling and physical therapy. Tr. 21. The  
21 effectiveness of treatment is a relevant factor in determining the severity of a  
22 claimant's symptoms. 20 C.F.R. § 416.913(c)(3); *see Warre v. Comm'r of Soc.*  
23 *Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006); *Tommasetti v. Astrue*, 533 F.3d  
24 1035, 1040 (9th Cir. 2008) (a favorable response to treatment can undermine a  
25 claimant's complaints of debilitating pain or other severe limitations).  
26 Additionally, an unexplained, or inadequately explained, failure to seek treatment  
27 or follow a prescribed course of treatment may be considered when evaluating the  
28 claimant's subjective symptoms. *Orn*, 495 F.3d at 638.



1 Here, the ALJ found that Plaintiff's arc of mental health treatment was not  
2 consistent with her allegations of disability, noting that she did not require  
3 inpatient treatment for her symptoms and her counseling notes are unremarkable;  
4 and the ALJ noted her mental and physical conditions improved with treatment  
5 when she followed treatment recommendations. Tr. 21. While Plaintiff alleges  
6 disabling mental health limitations, she has not received consistent mental health  
7 treatment; the ALJ noted Plaintiff reported she had learned several skills to help  
8 her cope and was ready to complete treatment in 2018. Tr. 21 (citing Tr. 965, 978).  
9 Further, while records show physical therapy helped her back pain, in 2018 she  
10 reported she had not been to physical therapy since 2016. Tr. 1288-89, *see e.g.*, Tr.  
11 550, 557. While lumbar/SI joint epidural steroid injections were recommended,  
12 Plaintiff did not have the procedure. Tr. 558-559, 960-62, 1288. On this record, the  
13 ALJ reasonably concluded that Plaintiff's symptom claims were inconsistent with  
14 the arc of her mental health treatment, improvement with treatment, and failure to  
15 follow some treatment recommendations. These findings are supported by  
16 substantial evidence and are clear and convincing reasons to discount Plaintiff's  
17 symptom claims.

18 **3. Activities of Daily Living.**

19 The ALJ noted Plaintiff's allegations were not consistent with her activities  
20 of daily living noting "she is a mother to four children, including a new infant."  
21 Tr. 21. The ability to care for others without help has been considered an activity  
22 that may undermine claims of totally disabling pain. *Rollins*, 261 F.3d at 857. For  
23 care activities to serve as a basis for the ALJ to discredit a claimant's symptom  
24 claims, the record must identify the nature, scope, and duration of the care  
25 involved, showing that the care is "hands on" rather than a "one-off" care activity.  
26 *Trevizo v. Berryhill*, 871 F.3d 664, 675-76 (9th Cir. 2017). Here, the ALJ did not  
27 cite to any testimony or other evidence and did not further detail Plaintiff's  
28 childcare activities. Moreover, Plaintiff testified at the hearing that while she has

1 four children, one is her adult son who lives with her, and two are teenagers; she  
2 testified that they all help her with the housework and the baby. Tr. 63-67.

3 While care activities may rebut a claimant's symptom claims, the ALJ failed  
4 to provide any evidence that care-taking activities were inconsistent with her  
5 symptom claims. This reason is therefore not supported by substantial evidence.  
6 This error is harmless, however, because the ALJ identified other specific, clear,  
7 and convincing reasons to discount Plaintiff's symptom claims. *See Carmickle v.*  
8 *Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1162-63 (9th Cir. 2008); *Molina v.*  
9 *Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) ("[S]everal of our cases have held that  
10 an ALJ's error was harmless where the ALJ provided one or more invalid reasons  
11 for disbelieving a claimant's testimony, but also provided valid reasons that were  
12 supported by the record."); *Batson*, 359 F.3d at 1197 (holding that any error the  
13 ALJ committed in asserting one impermissible reason for claimant's lack of  
14 credibility did not negate the validity of the ALJ's ultimate conclusion that the  
15 claimant's testimony was not credible).

16 **4. Inconsistent Statements.**

17 Finally, the ALJ noted Plaintiff had not worked for many years, and that  
18 "[Plaintiff] herself indicated that she does not want to work." Tr. 22. An ALJ may  
19 consider inconsistent statements by a claimant in assessing her subjective  
20 statements. *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001). Records  
21 from 2016 and 2019 show Plaintiff reported she was a homemaker, was not  
22 looking for work, and did not want help finding employment or job training. Tr.  
23 345, 1310. Such inconsistency is a reasonable factor for an ALJ to discuss in  
24 evaluating the reliability of a claimant's allegations of disabling impairments.

25 The Court finds the ALJ offered clear and convincing reasons for her  
26 assessment of Plaintiff's subjective reports. Plaintiff is not entitled to remand on  
27 these grounds.  
28

1 **D. Step Five.**

2 Plaintiff argues the ALJ erred at step five. ECF No. 21 at 20-21. At step five  
3 of the sequential evaluation analysis, the burden shifts to the Commissioner to  
4 establish that 1) the claimant can perform other work, and 2) such work “exists in  
5 significant numbers in the national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran*,  
6 700 F.3d at 389 (9th Cir. 2012). In assessing whether there is work available, the  
7 ALJ must rely on complete hypotheticals posed to a vocational expert. *Nguyen v.*  
8 *Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996). The ALJ’s hypothetical must be  
9 based on medical assumptions supported by substantial evidence in the record that  
10 reflects all of the claimant’s limitations. *Osenbrook v. Apfel*, 240 F.3d 1157, 1165  
11 (9th Cir. 2001). The hypothetical should be “accurate, detailed, and supported by  
12 the medical record.” *Tackett*, 180 F.3d at 1101. The hypothetical that ultimately  
13 serves as the basis for the ALJ’s determination, i.e., the hypothetical that is  
14 predicated on the ALJ’s final RFC assessment, must account for all the limitations  
15 and restrictions of the claimant. *Bray*, 554 F.3d at 1228.

16 As discussed above, the ALJ’s RFC need only include those limitations  
17 found credible and supported by substantial evidence. *Bayliss v. Barnhart*, 427  
18 F.3d 1211, 1217 (9th Cir. 2005) (“The hypothetical that the ALJ posed to the VE  
19 contained all of the limitations that the ALJ found credible and supported by  
20 substantial evidence in the record.”). “If an ALJ’s hypothetical does not reflect all  
21 of the claimant’s limitations, then the expert’s testimony has no evidentiary value  
22 to support a finding that the claimant can perform jobs in the national economy.”  
23 *Id.* However, the ALJ “is free to accept or reject restrictions in a hypothetical  
24 question that are not supported by substantial evidence.” *Greger v. Barnhart*, 464  
25 F.3d 968, 973 (9th Cir. 2006). Therefore, the ALJ is not bound to accept as true the  
26 restrictions presented in a hypothetical question propounded by a claimant’s  
27 counsel if they are not supported by substantial evidence. *Magallanes*, 881 F.2d at  
28 756-57; *Martinez v. Heckler*, 807 F.2d 771, 773 (9th Cir. 1986). A claimant fails to

1 establish that a step five determination is flawed by simply restating an argument  
2 that the ALJ improperly discounted certain evidence, when the record  
3 demonstrates the evidence was properly rejected. *Stubbs-Danielson v. Astrue*, 539  
4 F.3d 1169, 1175-76 (9th Cir. 2008).

5 Plaintiff contends the ALJ erred by relying on the vocational expert's  
6 response to an incomplete hypothetical. ECF No. 21 at 20-21. However, Plaintiff's  
7 argument assumes that the ALJ erred in her analysis of the medical opinion  
8 evidence. As addressed *supra*, the ALJ properly assessed the medical opinion  
9 evidence. The ALJ has the discretion to evaluate and weigh the evidence and the  
10 Plaintiff's alternative interpretation of the evidence does not undermine the ALJ's  
11 analysis. The ALJ did not err in assessing the RFC or finding Plaintiff capable of  
12 performing work existing in the national economy, and the RFC adequately  
13 addresses the medical opinions in this record.

14 Plaintiff is not entitled to remand on these grounds.

### 15 **VIII. CONCLUSION**

16 Having reviewed the record and the ALJ's findings, the Court finds the  
17 ALJ's decision is supported by substantial evidence and free of legal error and is  
18 affirmed. Therefore, **IT IS HEREBY ORDERED:**

19 1. Defendant's Motion for Summary Judgment, **ECF No. 26**, is  
20 **GRANTED.**

21 2. Plaintiff's Motion for Summary Judgment, **ECF No. 21**, is **DENIED.**  
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1 The District Court Executive is directed to file this Order and provide a copy  
2 to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant  
3 and the file shall be **CLOSED**.

4 **IT IS SO ORDERED.**

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6 DATED September 19, 2022.



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JAMES A. GOEKE  
UNITED STATES MAGISTRATE JUDGE